

STATE OF MICHIGAN
COURT OF APPEALS

JOHN ANTHONY & ASSOCIATES, LTD.,

Plaintiff-Appellee,

v

COUNTY LINE NURSERIES, INC. d/b/a/
COUNTY LINE NURSERIES &
LANDSCAPING and MICHAEL S. COLLINS,

Defendants-Appellants.

UNPUBLISHED

October 26, 2006

No. 264357

Van Buren Circuit Court

LC No. 05-530617-CK

Before: Cavanagh, P.J., and Bandstra and Owens, JJ.

PER CURIAM.

Defendants appeal as of right the trial court's order of involuntary dismissal following its grant of defendants' motion to dismiss under MCR 2.223(B)(2), based on plaintiff's failure to pay defendants' attorney fees within 56 days of the order changing venue. We affirm.

MCR 2.223(B)(2) provides that if a plaintiff fails to pay the costs associated with a change of venue within the time allowed "the action must be dismissed by the court to which it was transferred." Defendants assert that all dismissals under MCR 2.223(B)(2) must be with prejudice. We review de novo the construction and interpretation of a court rule. *ISB Sales Co v Dave's Cakes*, 258 Mich App 520, 526; 672 NW2d 181 (2003). When construction of a court rule is required, the legal principles that govern the construction and application of statutes are utilized. *Id.* Issues of statutory construction present questions of law that are reviewed de novo. *Id.* The primary goal of statutory interpretation is to give effect to the intent of the Legislature. *Id.* at 526-527. This determination is accomplished by examining the plain language of the statute. *Id.* at 527. If the statutory language is unambiguous, appellate courts presume that the Legislature intended the meaning plainly expressed and further judicial construction is neither permitted nor required. *Id.* Statutory language should be reasonably construed, keeping in mind the purpose of the statute. *Id.*

"Dismissal" is the "[t]ermination of an action or claim without further hearing, esp[ecially] before the trial of the issues involved." Black's Law Dictionary (8th ed). Voluntary dismissals are governed by MCR 2.504(A), and involuntary dismissals are governed by MCR 2.504(B). The dismissal at issue here was an involuntary dismissal pursuant to MCR 2.223(B)(2). MCR 2.504(B)(3) provides:

Unless the court otherwise specifies in its order for dismissal, a dismissal under this subrule or a dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for failure to join a party under MCR 2.205, operates as an adjudication on the merits.

Defendants' insistence that MCR 2.504(B) is inapplicable to this case is simply incorrect. MCR 2.504(B) expressly applies to all involuntary dismissals under the court rule itself or other rules and court orders. Here, plaintiff's claim was involuntarily dismissed due to its failure to comply with a court order to pay costs authorized by MCR 2.223(B)(1). MCR 2.504(B)(3) provides a trial court with discretion to dismiss a case without prejudice, with two exceptions that are inapplicable here. The trial court properly exercised the discretion afforded by MCR 2.504(B)(3) by specifying that its order for dismissal was not to operate as an adjudication on the merits.

In reaching our conclusion, we reject the argument that plaintiff would avoid all penalty for bringing the original action in the wrong venue if it is permitted to refile the dismissed claim. The trial court assigned to hear the refiled claim is authorized by MCR 2.504(D) to "order the payment of such costs of the action previously dismissed as it deems proper," and "may stay proceedings until the plaintiff has complied with the order." Attorney fees are recoverable under MCR 2.504(D), *Sirrey v Danou*, 212 Mich App 159, 161; 537 NW2d 231 (1995), and plaintiff may be held responsible for those fees.

We affirm.

/s/ Mark J. Cavanagh
/s/ Richard A. Bandstra
/s/ Donald S. Owens